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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION THREE

In re Allyssa M. et al., Persons  
Coming Under the Juvenile  
Court Law.

B290410

LOS ANGELES COUNTY  
DEPARTMENT OF  
CHILDREN AND FAMILY  
SERVICES,

Los Angeles County  
Super. Ct. Nos.  
CK96516A, CK96516B,  
CK96516C, CK96516D,  
CK96516E

Plaintiff and Respondent,

v.

RICHARD M.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Marguerite D. Downing, Judge. Affirmed.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

## INTRODUCTION

Though Richard M. (father) had more than a year to comply with the juvenile court's order to complete a batterer's intervention program and anger management counseling to address his violent and controlling behavior, he never did. So, when the court terminated jurisdiction over Allyssa M., Ashley M., E.M., Katherine M., and X.M., it awarded sole legal and physical custody to Allison S. (mother). Father was granted monitored visitation. We are asked to decide whether the court abused its discretion by denying father joint legal custody of the children.<sup>1</sup> Because it was not arbitrary, capricious, or patently absurd for the court to conclude the children's interests would be best served by giving mother sole authority over decisions about their health, education, and welfare, we affirm.

## BACKGROUND

The family in this case consists of mother, father, Allyssa (born 2009), Ashley (born 2010), E.M. (born 2012), Katherine (born 2015), and X.M. (born 2017). The family has a long history of domestic violence. Among other abuse, father had slapped mother in the face, punched her, broken her nose, and choked her with both his hands and a phone cord. The family has one previous dependency intervention, and father has several prior convictions for violent crimes.

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<sup>1</sup> Father does not challenge the termination of dependency jurisdiction or the court's order granting sole physical custody to mother. Mother is not a party to this appeal.

## **1. Prior Dependency Proceedings and Father's Criminal History**

On June 28, 2012, father was arrested for assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)) and domestic violence (*id.*, § 273.5).

Based in part on that incident, a dependency petition was filed in Orange County Superior Court on July 3, 2012. On July 24, 2012, the Orange County Superior Court issued a three-year restraining order against father preventing him from contacting mother or the children. The children were ultimately removed from both parents. On September 27, 2012, the case was transferred to Los Angeles County.

On February 6, 2013, father was convicted of felony domestic violence (Pen. Code, § 273.5, subd. (a)) and misdemeanor child abuse (*id.*, § 273a, subd. (b)) in Orange County. He was granted three years' probation and ordered to serve one year in county jail.<sup>2</sup> The court issued a three-year restraining order against father, preventing him from contacting mother or the children.

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<sup>2</sup> This was not the first time the court had granted probation to father. On September 22, 2010, for example, father pled no contest to one count of trespassing (Pen. Code, § 602.5) in exchange for dismissal of three charges: brandishing a replica firearm (*id.*, § 417.4), assault with a deadly weapon (*id.*, § 245), and criminal threats (*id.*, § 422). He was ordered to enroll in and complete 52 sessions with a licensed therapist to address anger issues. Father's therapist was ordered to read the police reports in the case and provide the court with a diagnosis, prognosis, and frequent progress reports on father's condition. Father did not complete the sessions before his 2013 sentencing in the domestic violence case that formed the basis of the 2012 Orange County dependency petition.

On October 9, 2013, in the dependency case, the children were released to mother under a home of parent order. On April 9, 2014, the court terminated jurisdiction. It granted mother sole physical custody and joint legal custody. It granted father joint legal custody and twice-weekly monitored visits of two hours per visit.

Two years later, notwithstanding the restraining order that was still in effect, the family was living together in a hotel. Mother, father, and the children lived in one room, and the paternal grandmother lived in a room directly across the hall. On October 9, 2015, Allyssa was in her grandmother's room when father came home drunk from the Commerce Casino, banged on the door, and demanded that his mother return his daughter. When she refused, mother told father to go to bed while she retrieved Allyssa. But father didn't go to bed. Instead, he went outside, got in his Hummer SUV, and crashed it through the hotel wall into his mother's room.

On March 2, 2016, father pled no contest to three felonies stemming from the incident—resisting an officer (Pen. Code, § 69), assault with a deadly weapon (*id.*, § 245, subd. (a)(1)), and felony vandalism (*id.*, § 594, subd. (a))—and was sentenced to an aggregate term of two years in state prison. Father was released in September 2016 and placed on post-release community supervision (PRCS).

## **2. Initiation of Current Dependency Proceedings**

The Los Angeles Department of Children and Family Services (Department) received a report that on December 14, 2016—three months after his release from custody in the Hummer-crashing case—that father bashed mother on the head with a mobile phone in the children's presence. Father initially

denied the incident and later refused to discuss it on Fifth Amendment grounds.

On January 30, 2017, the Department filed a dependency petition on behalf of Allyssa, Ashley, E.M., and Katherine alleging serious physical harm and failure to protect. (Welf. & Inst. Code,<sup>3</sup> § 300, subds. (a), (b)(1).) At the initial detention hearing on January 30, 2017, the court detained the children from father and released them to mother's custody. Father failed to appear.<sup>4</sup>

At the jurisdictional hearing on March 27, 2017, mother pled no contest to the allegations in the section 300 petition. Father did not appear at that hearing either. The court sustained the allegations and found father's domestic violence against mother and mother's failure to protect the children warranted dependency jurisdiction.

At the disposition hearing on April 5, 2017, the court declared the children dependents of the court, removed the children from both parents, and, because father was still missing, ordered family reunification services for mother only. Mother was ordered to participate in domestic violence classes; parenting classes; and individual counseling to address domestic violence and its effect on children, codependency, child protection, and repeated involvement with the dependency court. Father was ordered to complete a 52-week batterer's intervention program,

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<sup>3</sup> All undesignated statutory references are to the Welfare and Institutions Code.

<sup>4</sup> The record does not reveal whether father's failure to appear was due to the outstanding warrant that had issued on December 28, 2016, for his violation of the obey-all-laws term of his PRCS.

take anger management and parenting classes, and submit to random drug testing. The court ordered monitored visits for both parents, with father's visits to begin after he made contact with the Department.

### **3. Post-Disposition Events**

On April 19, 2017, mother filed a request for a temporary restraining order against father. The court granted the request and set the matter for a hearing.

Father was apprehended on the outstanding criminal warrant on April 26, 2017. On May 10, 2017, he was convicted of misdemeanor domestic violence (Pen. Code, § 273.5, subd. (a)) and granted three years' probation. As a condition of probation, he was ordered to serve 60 days in county jail.<sup>5</sup>

Father made his first dependency court appearance on May 31, 2017, while he was in custody, and was served with the temporary restraining order. On June 20, 2017, the court issued a three-year restraining order protecting mother from father. The order expires on June 20, 2020.

On July 12, 2017, the Department filed a dependency petition on behalf of one-month-old X.M. alleging serious physical harm, failure to protect, and abuse of a sibling. (§ 300, subds. (a), (b)(1), (j).) At the detention hearing the same day, the court made a prima facie finding on the petition, detained X.M. from father, and released her to mother's custody.

On August 17, 2017, the Department filed a report detailing the results of its continued investigation. It explained that while mother had "a long history of failing to protect herself

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<sup>5</sup> Father was not returned to prison for the PRCS violation.

and her children from the father's domestic violence," she had "made enough progress in her current individual and group therapy to adequately protect her daughter [X.M.] at this time. During a very lengthy [ ] interview, [mother] did not minimize or deny her and the father's harmful past behavior. To the contrary, she admitted and took responsibility for her actions, and she is able to articulate how her actions (or inaction) have negatively impacted her children. She did not appear to withhold or hide information; instead, she seemed very deliberate and thoughtful to tell the truth, even when it may have made her look bad. When confronted, [mother] did not become defensive, but rather appeared to have a resolve to learn from her mistakes, even in her current thinking."

The court conducted the adjudication and disposition hearing on October 4, 2017—the same day as the six-month review hearing for the other children, discussed below. It found the abuse of a sibling allegation (§ 300, subd. (j)) true and dismissed the remaining counts. The court removed X.M. from father and placed her with mother under a family maintenance plan.

Meanwhile, in the original dependency action, mother had completed her case plan but continued to attend her programs because they had been helpful to her. The Department recommended the children return to her care.

At the six-month review hearing on October 4, 2017, the court found that mother had made substantial progress toward alleviating or mitigating the issues necessitating placement and that returning the children to her custody would not create a substantial risk to their safety, protection, or emotional or physical wellbeing. Accordingly, the court terminated the suitable

placement order and placed the children with mother under a family maintenance plan. The court ordered the Department to provide father with enhancement services.

#### **4. Termination of Proceedings**

On May 23, 2018, the Department recommended the court terminate dependency jurisdiction, award sole physical and joint legal custody to mother, and award father joint legal custody and monitored visitation. Father's attorney conceded physical custody but requested joint legal custody. Counsel argued, "He wants it to be joint legal with mother. He wants to be able to be part of decision making for his children, with respect to schooling."

The court terminated jurisdiction and stayed termination pending receipt of the custody exit order. The court awarded mother sole legal and physical custody and awarded father the monitored visitation recommended by the Department. In denying father's request for joint custody, the court noted that if father had wanted joint legal custody, he "needed to complete his programming because at this point he has monitored visitation."

On May 30, 2018, the court signed the custody order and lifted the stay. The order stated that father was limited to supervised visitation because he had not completed drug abuse treatment with random testing, domestic violence treatment, or anger management classes. The order also noted: "Prior to any modification to this order, the Family Law Court should review the Juvenile Dependency File."

Father filed a timely notice of appeal.<sup>6</sup>

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<sup>6</sup> On September 20, 2018, the Department notified us that because it had suggested below that father receive joint legal custody, it would be not be taking a position in this matter. We appointed counsel to



## DISCUSSION

Father contends the trial court abused its discretion by awarding mother sole legal custody of the children. We disagree.

### 1. Legal Principles and Standard of Review

“When a child is adjudged a dependent of the juvenile court, any issues regarding custodial rights between his or her parents shall be determined solely by the juvenile court ... so long as the child remains a dependent of the juvenile court.” (§ 302, subd. (c).) When the court terminates its jurisdiction, it may enter exit orders “determining the custody of, or visitation with, the child.” (§ 362.4, subd. (a); *In re Roger S.* (1992) 4 Cal.App.4th 25, 30.)

Unlike family law judges, dependency judges crafting exit orders focus on the child’s best interests, unconstrained by “any preferences or presumptions” about parental custody. (*In re John W.* (1996) 41 Cal.App.4th 961, 972, italics omitted.) “In juvenile dependency proceedings the child is involved in the court proceedings because he or she has been abused or neglected. Custody orders are not made until the child has been declared a dependent of the court and in many cases, such as this one, the child has been removed from the parents upon clear and convincing evidence of danger. The issue of the parents’ ability to protect and care for the child is the central issue. The presumption of parental fitness that underlies custody law in the family court just does not apply to dependency cases. Rather the

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represent mother as respondent, and on November 5, 2018, mother’s attorney notified us that, in light of the Department’s position, mother wished to submit the case for decision based on father’s opening brief.

juvenile court, which has been intimately involved in the protection of the child, is best situated to make custody determinations based on the best interests of the child without any preferences or presumptions.” (*In re Jennifer R.* (1993) 14 Cal.App.4th 704, 712.)

Accordingly, when fashioning exit orders, juvenile courts have broad discretion to decide what would best serve and protect the child’s interests—and we will not disturb an exit order unless the court abuses that discretion. (*In re I.G.* (2004) 226 Cal.App.4th 380, 386–387.) “ ‘The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.’ [Citations.]” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318–319; *id.* at p. 318 [court abuses its discretion if its order is “ ‘arbitrary, capricious, or patently absurd” ’ ].)

## **2. The order was not an abuse of discretion.**

“ ‘Joint legal custody’ means that both parents shall share the right and the responsibility to make the decisions relating to the health, education, and welfare of a child.” (Fam. Code, § 3003.) Father contends the court abused its discretion by awarding sole legal custody to mother because he had made “good progress” on his case plan, he had been understanding about mother’s move to Kern County, and a neighbor of mother’s made an inconclusive allegation that she physically abused the children. We hold the court could have reasonably concluded it would be difficult for mother to coordinate medical, educational, travel, and other decisions with someone she and the children feared, who flouted the court’s orders, and who had a history of

controlling, manipulative behavior and present inability to get along with social workers, foster care providers, and his own attorney.

### **2.1. Failure to Complete Case Plan**

Because of father's refusal to speak to social workers or a court-appointed psychiatrist about either this case or his history of domestic violence, completion of his case plan was a particularly important metric for evaluating his progress. Yet father failed to complete his case plan.

By the time the court terminated jurisdiction, father had completed all court-ordered parenting classes but only 30 of 52 required domestic violence and anger management classes. While the court had also ordered father to submit to random drug tests, father had "reported that he has trouble testing the traditional way" and asked to have blood drawn.<sup>7</sup> But the Department's toxicology lab did not perform blood tests, and though the lab could do hair follicle testing instead, father insisted "he is bald and would like blood to be drawn."<sup>8</sup> It does not appear that father ever received a drug test. Likewise, in October 2017, the court ordered father to undergo a psychiatric evaluation—but the doctor was unable to reach father to schedule it. Father ultimately called to schedule the appointment in February 2018, four months later.

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<sup>7</sup> The record does not reveal the basis, if any, for father's claim that he had "trouble testing the traditional way."

<sup>8</sup> The record does not reveal whether father had hair on his chest, legs, or arms available for testing.

In light of father’s demonstrated unwillingness or inability to abide by the court’s orders in this case, the court could reasonably conclude he was not a good candidate to share decision-making authority or to successfully co-parent with mother. That decision was supported by the fact that after the court in father’s previous dependency case had awarded father joint legal custody notwithstanding his failure to complete his family reunification plan—including requirements for mental health and substance abuse treatment, both of which he again failed to complete in this case—father had gone on to commit more domestic violence against mother.

## **2.2. Confrontational, Manipulative Behavior**

There was also substantial evidence father’s controlling, manipulative behavior would make it difficult for mother to exercise her decision-making authority—and difficult for teachers, coaches, and doctors to work with her kids—if father were awarded joint legal custody.

The Department noted, in X.M.’s August 17, 2017, jurisdiction/disposition report, that in addition to father’s “violent behaviors,” the Department was “also concerned about certain patterns of [father’s] thinking and behavior, such as (1) his refusal/inability to take any responsibility for his actions or the harm his actions have caused others (especially his children), (2) an apparent total lack of remorse or empathy, (3) his apparent preference for confrontational or combative interactions, and (4) a penchant for manipulation.”

Though father’s refusal to speak about his case or his history of domestic violence made him more difficult to evaluate, the Department did have the opportunity to observe father’s behavior first-hand—and its observations were concerning. For

example, as part of his request for an expedited bus pass, father texted a social worker “a photograph of his Hummer SUV lodged half-way into the wall of a building with the following message underneath: ‘And I suffered an unfortunate accident with my SUV. So I would please appreciate an ASAP on the bus pass sir.’ ” This claim was misleading at best.

As a different social worker explained: “First, this photograph was taken two years ago on or about 10/9/15, and this was no ‘unfortunate accident.’ [Father] purposefully drove his Hummer through the wall of the very motel room where he believed his mother and 5 year old daughter Allyssa were at that moment. Second, his statement, ‘I suffered,’ makes him[ ] out to be the victim, which grossly misstates the facts. The victims of his criminal actions were his mother, his children, the children’s mother, the motel owner, and the other nearby motel residents. The ease [with] which [father] manipulates the facts to his service is highly disturbing.”

On August 9, 2017, a staff member at Katherine’s foster care agency emailed the Department: “Please inform the Father that due to his abusive behavior (Language) that I will be consulting with my supervisor as to whether or not we will be accepting any calls from him at all, at the foster home or at the office. If the father continues with this behavior or exhibits it at the visit, we will cancel any visit where it occurs immediately and call the police. [¶] If he call[s] me again I will not accept his call. If he continues to use abusive language, I will call the police and file a complaint. If at that point there is any way I can have him arrested, then I will be very happy to do so. [¶] Again, if you wish to move Katherine, we understand.”

The social worker forwarded the email to his supervisor, noting that he was “extremely concerned that [father’s] children will lose their placement due to the father’s harassing behavior towards the [agency’s] caregivers and staff.” A different social worker later warned the court: **“Stronger limitations on the father’s visitation [are] needed in order to protect the children ([X.M.’s] siblings) and to prevent the father’s abusive behavior from sabotaging the children’s placements.”** (Emphasis in original.) This worry proved justified, as Katherine was ultimately forced to move to a new foster home.

Nevertheless, father made no effort to correct—or even acknowledge—his behavior. In the six-month review report, on October 4, 2017, the Department again noted: “Father has had altercations with [Foster Family Agency] worker and hanging the phone up and using foul language and calling repeatedly throughout the days everyday demanding his demands. Father denies this happening and feels that they were all lies and that he feels they were against him because when he speaks up for his children.”

Nor were father’s confrontational tendencies limited to social workers and caregivers. On February 23, 2018, father’s attorney asked the court to appoint new counsel to represent him. Counsel explained: “There has been a complete breakdown in the relationship between our office and father ... such that the father on 2/23/2018 emphatically asked that we no longer act as his Attorneys and requested that the matter be walked on for a new Attorney [to] be appointed to represent him.” The court scheduled a hearing on father’s request for the following week—but father failed to appear.

In sum, father's combativeness and lack of insight made him a poor candidate for joint legal custody.

### **2.3. Other Factors**

We also note that when the court terminated jurisdiction, mother and the children were still afraid of father. The children explained "that their Dad is mean" and "they are scared of him because ... their Dad has hit them and their Mom in the past." As such, they only wanted monitored visits with him. Mother was also scared. Though father was still subject to a restraining order, on January 19, 2018, before she moved to Kern County, mother saw father driving by her home.

In addition, there is nothing in the record to suggest father could not continue to enjoy a relationship with the children despite losing legal custody. The court's exit order awarded him at least two monitored visits per week lasting at least three hours each.

For all these reasons, we conclude the court did not abuse its discretion in awarding mother sole legal custody of the children.

**DISPOSITION**

The order is affirmed.

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LAVIN, Acting P. J.

WE CONCUR:

EGERTON, J.

DHANIDINA, J.